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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 15th March 1958/Phalguna 24, 1879 Saka

S.O. 815.—Whereas the election of Shri Hari Har Sonule as a member of the House of the People from the Nanded constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Digambar Rao Bindu Son of Govind Rao Bindu, R/o Nanded City, Bombay State;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE SHRI K. T. MANGALMURTI, B.Sc., LL.B. (RETIRED JUDGE OF THE BOMBAY HIGH COURT), MEMBER, ELECTION TRIBUNAL, NAGPUR

ELECTION PETITION No. 444 OF 1957

Petitioner:

Shri Digambar Rao Bindu son of Govind Rao Bindu, aged 60 years, resident of Nanded City.

Versus

Respondents:

1. Shri Dev Rao Kamble son of Namdevrao, aged 40 years, residing at Pathri, District Parbhani.
2. Shri Hari Har Sonule son of Nagorao, aged 32 years, resident of Hatgaon, District Nanded.
3. Shri Vijendra Kabra, aged about 35 years, resident of Aurangabad.

ORDER

Passed on 7th February 1958

In this Election Petition Shri Digambar Rao Bindu has challenged the election of Shri Hari Har Rao Sonule from the two-member Constituency of Nanded in the Bombay State, one seat of which is reserved for the Scheduled Castes and the other is not. In the general election held in 1957, there were four candidates who contested the elections to these two seats. Their names and the votes obtained by them are given below:—

1. Shri Devrao Kamble, Scheduled Caste (Respondent No. 1)	1,77,275
2. Shri Hari Har Rao Sonule, Scheduled Caste (Respondent No. 2)	1,49,667
3. Shri Digambar Rao Bindu, (Petitioner)	1,46,698
4. Shri Vijendra Kabra (Respondent No. 3)	1,82,082

Shri Kamble was declared elected for the Reserved seat and Shri Hari Har Rao Sonule was declared elected for the other seat which is not reserved. The grounds on which the Petitioner

challenges the election of Shri Hari Har Rao Sonule for the general seat will be clear from the following issues:—

Issues	Findings
1. (a) Did any voter put both the votes in the Ballot Box of the Petitioner ? (b) Did any voter put both the votes in the Ballot Box or Boxes of other candidate or candidates ? (c) Where both the votes rejected in such cases by the Returning Officer ? (d) Was this action of the Returning Officer illegal ? (e) What is the number of such votes ? (f) What effect ?	Not pressed in argument
2. (a) Was it incumbent on the Returning Officer to arrange for separate polling compartments—one for the general seat and the other for the reserved seat ?	
(b) Whether it was incumbent on the Returning Officer to issue the two ballot paper—one for the general seat and the other for the reserved seat—separately and one after the other, both in the case of polling at the Polling Station (Rule 27) and Postal ballot (Rule 46)	
(c) Are Rules 27, 28 and 46 or any of them illegal and <i>ultra-vires</i> of Sections, 32 and 63 of the Representation of the People Act, 1951 as modified from time to time and also of Article 14 of the Constitution ?	
3. (a) Is it necessary for a candidate, who is qualified to be chosen to fill a seat in the House of the People reserved for the Scheduled Castes in any State, to fill in a separate valid nomination form for the general seat also ?	
(b) If he does not fill in a separate valid nomination form for the general seat but only fills in a form for the reserved seat, is he included in the expression "remaining candidates" in sub-section (4) of Section 54 of the Representation of the People Act, 1951 ?	
(c) Is the illustration to sub-section (4) of Section 54 <i>ultra-vires</i> of that Section ?	Yes.
(d) Are sub-section (4) of Section 54 and the illustration <i>ultra-vires</i> of the Articles 14 and 15 of the Constitution ?	No.
4. (a) Is the election of Shri Hari Har Sonule for the general seat void ?	No.
(b) Can and should the Petitioner Shri Digambar Rao Bindu be declared to have been duly elected to the House of the People from the Nanded Parliamentary Constituency for the General or "non-reserved" seat ?	No.
(c) What relief ?	No.

The petition of Shri Bindu is dismissed.

2. Issue 1 (a) to (f) was not pressed during the argument at it was found in the evidence of Shri Madhukar Narasimha Desai, Returning Officer, that where a voter had put both his ballot papers in the ballot box of a candidate, one was held valid and the other was rejected as provided in sub-section (2) of Section 63 of the Representation of the People Act, 1951 and sub-rule (3) of Rule 57 of the Representation of the People Rules, 1956.

3. Issues 2 and 3.—The learned counsel for the Petitioner challenged the decision of the Returning Officer on the following grounds:—

- (i) Section 54 of the Representation of the People Act, 1951, is applicable to two-member or multi-member constituencies where a seat or seats are reserved and the candidates qualified to be chosen to fill the reserved seats have not only filled in nomination forms and made deposits for a reserved seat but have also filed a nomination paper for a seat which is not reserved and made a separate deposit for it.
- (ii) If this is not the interpretation of Section 54, then it is discriminatory and violates Articles 14 and 15 of the Constitution.
- (iii) Section 54 oversteps the authority given to the Parliament by Article 330 read with Article 327 of the Constitution. The Parliament under the delegated authority under the colour of Election Law could not confer fresh franchise or any additional privilege on any community.

4. In order to understand the points involved in the case, it is necessary to know the relevant provisions of the Constitution.

Article 326 provides that 'the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as

may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election'.

Article 325 provides that 'there shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them'.

Article 81(1)(a) provides that 'subject to the provisions of clause (2) and of articles 82 and 331, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States. (b) For the purpose of sub-clause (a), the States shall be divided, grouped or formed into territorial constituencies and the number of members to be allotted to each such constituency shall be so determined as to ensure that there shall be not more than one member for every 500,000 of the population'.

Article 84 lays down that 'a person shall not be qualified to be chosen to fill a seat in Parliament unless he— (a) is a citizen of India; (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and (c) possessing such other qualifications as may be prescribed in that behalf by or under any law made by Parliament'.

Article 327 of the Constitution provides that 'subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses'.

5. It is clear from all this that we have no separate electorates based only on religion, race, caste or sex, but joint electorates and the voters are to elect members to the House of the People directly, and for this purpose, States are divided, grouped or formed into territorial constituencies and the number of members to be allotted to each constituency is determined in the way laid down.

6. So far, equality before the law has not been denied to any person, nor has there been any discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. To put it in other words, while laying down what is stated above, the Constitution has treated each adult person in the country as a citizen of India only without taking into consideration his caste, creed, religion, etc. He is a voter because he is a citizen of India, and he can stand as a member because he is a citizen of India; not because he belongs to this caste or that caste or this community or that community. In short, they have removed all distinctions of caste, creed, community.

7. A scheduled caste or a scheduled tribe person, if he has attained the required age, can be an elector and can be member of the Parliament and there is no distinction between him and any other person not belonging to the Scheduled Caste or Tribe. If the voters of all the constituencies in the whole of India so desire, all the members of the House of the People can belong to the Scheduled Caste and Scheduled Tribes because this distinction has been done away with by the Constitution. The framers of the Constitution, however, found that the Scheduled Castes and the Scheduled Tribes were so backward in education and their economic condition was so bad that they could not come up to the level of the other citizens unless some special provision was made to help them to come up to that level and that is the basis of Article 330 of the Constitution, which runs thus:—

"330. (1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes;

(b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State."

When this provision is taken with what is stated above, it only means that the Constitution secured for the Scheduled Castes and the Scheduled Tribes the minimum number of seats according to the population. That does not prevent them from getting more seats as citizens

of India because but for this exception there is no distinction between them and the other citizens. The Constitution has not created any separate electorate for them by reserving seats for them, nor has it created any separate constituencies for them. It is on this legal basis that the Representation of the People Act, 1951, is framed. Section 4 thereof gives the qualifications for membership of the House of the People it says:—

"4. *Qualifications for membership of the House of the People.*—A person shall not be qualified to be chosen to fill a seat in the House of the People.....unless—

(a) in the case of a seat reserved for the Scheduled Castes in any State, he is a member of any of the Scheduled Castes, whether of that State or of any other State, and is an elector for any Parliamentary constituency;

(d) in the case of any other seat, he is an elector for any Parliamentary Constituency." Section 82 thereof provides for the Nomination of candidates for election. It says:—

"Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act....."

It is not denied that Shri Hari Har Rao Sonule, under this provision, could be nominated as a candidate for election to fill any of the two seats in the Nanded Constituency as he belongs to a Scheduled Caste. But it is contended that he should have made two separate applications, one for the reserved seat and the other for the seat which is not reserved. It is doubtful if a person can apply for two seats in the same Constituency, but the idea here is not of applying for two seats but of applying for one seat or the other. It is "either" "or" and not both.

Section 33 of the Representation of the People Act deals with Presentation of nomination paper and requirements for a valid nomination. Clause (1) of that Section provides:

"On or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer."

Clause (2) of that section provides:

"In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State."

This means that his nomination paper will be valid for the seat which is not reserved without the declaration, but to make it valid for the reserved seat it must contain the declaration.

Sub-Section (6) of that Section provides:

"Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency."

This applies to a single-member constituency also and a candidate can have more than one nomination paper to safeguard against mistakes in the filling of the nomination paper. Section 33 has to be read as a whole and clause (2) thereof clearly shows that there can be one application for either of two seats—the reserved seat and the seat which is not reserved. In short the candidate can say "I am qualified for the reserved seat as well as the seat which is not reserved and I want to get elected for one of the two according to the will of the voters." The learned counsel for the Petitioner does not say that he cannot do it. His only contention is that he must file two separate nomination papers for it. The form of the nomination paper that has been prescribed is for either of the two seats and it is the correct form. I doubt whether two separate forms for two seats in the same constituency would be proper. At any rate he will have to say in the two forms that he is seeking election for either of the two seats and that is exactly what the prescribed form is.

Section 34 deals with the question of deposits. It says:

"A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited—

(a) in the case of an election from a Parliamentary constituency a sum of five hundred rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribes, a sum of two hundred and fifty rupees;"

The learned counsel for the Petitioner contends that this provision means that he has to deposit a sum of two hundred and fifty rupees only if he seeks election for the reserved seat, but he has to deposit Rs. 500 if he seeks election for the seat which is not reserved. I am unable to find anything in the wording of that section to support this interpretation. The learned counsel for the Petitioner then contended that if he could seek election to the seat which is not reserved by paying only Rs. 250, that is discrimination. Clause (4) of Article 15 of the Constitution, however, provides that "Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes."

8. We now come to Section 54 of the Representation of the People Act, 1951, which lays down Special procedure at elections in constituencies where seats are reserved for Scheduled Castes or Scheduled Tribes. Sub-section (1) thereof runs thus:—

"The provisions of this section shall apply in relation to any election in a constituency where the seats to be filled include one or more seats reserved for the Scheduled Castes or for the Scheduled Tribes (hereinafter referred to as "Reserved seats")."

The part of that section which applies to the present case is sub-section (4) which lays down:—

"If the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats, and the total number of contesting candidates also exceeds the total number of seats to be filled, a poll shall be taken; and after the poll has been taken, the returning officer shall first declare those who, being qualified to be chosen to fill the reserved seats, have secured the largest number of votes, to be duly elected to fill the reserved seats, and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats."

There is an illustration given below this sub-section and it is to the following effect:—

"Illustration.—At an election in a constituency to fill four seats of which two are reserved there are six contesting candidates A, B, C, D, E, and F, and they secure votes in descending orders, A securing the largest number. B, C and D are qualified to be chosen to fill the reserved seats, while A, E and F are not so qualified. The returning officer will first declare B and C duly elected to fill the two reserved seats, and then declare A and D (not A and E) to fill the remaining two seats."

The returning officer has followed this provision and the learned counsel for the Petitioner contends that he could not have done so, because Shri Sonule had not sought election to the seat which is not reserved. I have already shown above that that is not so.

9. The learned counsel for the Petitioner then contended that the illustration and even clause (4) of Section 54 are *ultra-vires* as they lead to discrimination, Shri Sonule getting a chance of candidature for both the seats while Shri Bindu getting a chance of candidature for only one seat *viz.* the seat which is not reserved. But that is the effect of discrimination allowed by article 330 of the Constitution by reservation of the seats and nothing more.

10. A person belonging to the Scheduled Caste can apply for the reserved seat or in the alternative for the seat which is not reserved, and that is made clear by Section 55 of the Representation of the People Act, 1951, which says:—

"For the avoidance of doubt it is hereby declared that a member of the Scheduled Castes or of the Scheduled Tribes shall not be disqualified to hold a seat not reserved for members of those castes or tribes, if he is otherwise qualified to hold such seats under the Constitution and this Act. . . ."

This is admitted by the learned counsel for the Petitioner. His only contention is that Shri Sonule did not make two applications, but I have already shown above that one application of the type prescribed is the proper one. Thus neither the illustration nor sub-section 4 of Section 54 nor Section 54 itself is *ultra-vires*.

11. It may be mentioned here that Shri Sonule had filed in all four nomination papers on three of which he had written "for reserved seat" but on the fourth there was no such endorsement, though it also contained a declaration by him specifying that he belonged to a Scheduled Caste. The rules do not require any such endorsement and so the endorsement cannot affect the election. Moreover, the fourth nomination paper does not bear it and it was also accepted as valid by the returning officer. The Respondent Shri Sonule has not given in his Written Statement the number of nomination papers he had filed and he has admitted therein that he was nominated as a candidate for election to fill the reserved seat. After the evidence of the returning officer, the learned counsel for the Respondent Shri Sonule wanted to amend his Written Statement by mentioning the number of nomination papers

filed by his client. Had it been necessary, the amendment would have been allowed. But it is not necessary in view of the view of law I have taken above and so that application for amendment is rejected.

12. The learned counsel for the Petitioner relied upon the decision in Election Petition No. 83 of 1957 (V. V. Giri vs. Dippala Suri Dora and two others) before the Election Tribunal, Hyderabad, in support of his argument. I have gone through that decision very carefully and with the greatest respect for the Member who decided the matter, I have to observe that it is based on a view of the provision regarding reserved seats with which I do not agree. The whole reasoning of that decision seems to be based on the view that article 330 of the Constitution has created a situation whereby a reserved seat has become something absolutely different from the seat which is not reserved to such an extent that every thing concerning it must be dealt with separately. I find it difficult to accept the reasoning. In my opinion, a reserved seat is like any other seat except that it is to go to a person who belongs to a Scheduled Caste. Everything else about it is the same. The learned Member also requires that the Scheduled Caste candidate must file two nomination papers—one for reserved seat and the other for the seat not reserved, but I have shown above that it is not necessary. The view taken by me clearly shows that “remaining candidates” in sub-section (4) include also the candidates qualified to be chosen to fill the reserved seats but not elected to fill those seats.

The learned Member says:

“It is however sufficient in this case to hold that section 54 in its entirety, has become a superfluity after the Delimitation Commission Act of 1952 and the Selection does not thereafter serve any purpose.”

I am unable to follow this in view of the provisions of sub-section (1) of section 54 which says: “The provisions of this section shall apply in relation to any election in a constituency where the seats to be filled include one or more seats reserved for the Scheduled Castes or for the Scheduled Tribes (hereinafter referred to as “Reserved seats”). It is applicable even where one seat is reserved for the Scheduled Castes or for the Scheduled Tribes. The learned counsel for the Petitioner in this case conceded this and said that he was not adopting this argument. I see nothing in the Delimitation Act which conflicts with the provisions of section 54 which can apply to two-member constituencies where one seat is reserved for the Scheduled Castes or for the Scheduled Tribes.

The learned member has made the following observations in the discussions of Issues 4 and 5: “Article 330 clause 2 provides that the number of seats for any scheduled caste or tribe shall depend upon the proportion of the population of such caste or tribe to the total population of the State and the Delimitation Act of 1952 and the Delimitation Commission has determined the number of seats for each State that could be reserved for scheduled castes or scheduled tribes and it would not therefore be competent for any authority to directly or indirectly vary the number of seats by securing to them more reserved seats than what are determined by the Delimitation Commission. If Section 54(4) is considered to be applicable to the present case, as must have been considered to be so applicable by the Returning Officer, then the result is, that in the Paravathipuram double member constituency where only one seat is reserved for scheduled castes or scheduled tribes, the 1st respondent who stood as a scheduled tribe candidate for the reserved seat has been declared elected to the seat which has not been reserved, and in consequence both seats in the double member constituency have come to be held by the members of the scheduled tribes, who contested the reserved seat. The declaration of the 1st respondent as being elected to the other seat in pursuance of Section 54(4) has the inevitable effect of increasing the number of seats already fixed by the Delimitation Commission for scheduled tribes and reducing the other seats or remaining seats by one, which is contrary to the provisions of the Constitution where the ratio of the reserved seats, as near as may be, should be in proportion to the population of the scheduled tribes to the general population of the State. In that view therefore the Section 54(4) is contrary to the principles enunciated in Article 330 and contrary also to Section 8 of the Delimitation Commission Act.” With the greatest respect, I have to observe that in this discussion the learned Member lost sight of the fact that a Scheduled Caste candidate could compete for the General seat also and as shown above not only the seat which is not reserved in the Nanded Constituency but all other seats could be filled in by persons belonging to the Scheduled Castes if the electorates so desire.

The learned Member further observed: “Any legislation therefore which has the effect of extending the protection granted by enlarging the number of reserved seats for the seats available for other communities would therefore work to their disadvantage. If the effect of such a legislation is to put the other communities, namely, non-scheduled castes or non-scheduled tribes at a disadvantage and secure to the scheduled caste and scheduled tribe more advantages, than what are prescribed in the Constitution and determined in the Delimitation Commission Act, such legislation would offend Article 14 of the Constitution.” Again with the greatest respect I have to say that the learned Member is taking into consideration the difference between Scheduled Castes and non-Scheduled Castes even in respect

of seats that are not reserved. Certainly, any member of the Scheduled Castes can be elected to a seat which is not reserved.

13. The learned Member means to say that by giving the seat which is not reserved also to a member of a Scheduled Caste, the Petitioner has been discriminated against. But that is not so. The member of a Scheduled Caste has as much right to be elected as the Petitioner if he gets more votes than the latter, and that is what has happened. I am unable to see where the discrimination is. On the other hand, the whole order of the learned Member shows that the distinction between a Scheduled Caste person and a person who does not belong to the Scheduled Caste is present in his mind from the very beginning to the end of his order, though it has to be borne in mind only while considering the reserved seats and no further.

14. The above discussion will clearly support the findings mentioned against issues 2, 3 and 4 given in Paragraph 1 of this order.

15. The result is that the petition of Shri Digambar Rao Bindu fails and is hereby dismissed with costs.

16. Counsel's fee Rs. 250.

K. T. MANGALMURTI,
Member, Election Tribunal,
Nagpur.

[No. 82/444/57.]

By Order,
S. C. ROY Secy.

